

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JERRY McDANIEL

PLAINTIFF

vs.

Civil Action No. 1:95cv32-D-D

THE CITY OF IUKA, MISSISSIPPI,
MAYOR DAVID L. NICHOLS, ALDERMAN
JAMES BATES, ALDERMAN HERBERT
BOOKER and ALDERMAN BESS YOUNG

DEFENDANTS

MEMORANDUM OPINION

Presently before the court is the motion of the plaintiff to remand this cause to the Circuit Court of Tishomingo County, Mississippi. The motion is not well taken, and it shall be denied.

FACTUAL SUMMARY

The plaintiff originally filed this action in the Circuit Court of Tishomingo County, Mississippi on December 27, 1994. Mr. McDaniel asserted a state law claim of wrongful discharge, as well as violations of his rights of due process, association and speech under the amendments to the United States Constitution. The defendants removed the action to this court on January 27, 1995 and stated that this court had original jurisdiction based upon the plaintiff's claims arising from the United States Constitution. The plaintiff has now moved to remand this action.

DISCUSSION

The plaintiff has asserted that the actions of the defendants violated his rights of due process and freedom of speech and association under the United States Constitution. These are

federal causes of action and despite the plaintiff's contentions to the contrary, this court has no discretionary authority to remand such federal-law actions to a state court. Burks v. Amerada Hess Corp., 8 F.3d 301, 304 (5th Cir. 1993); Buchner v. F.D.I.C., 981 F.2d 816, 817 (5th Cir. 1993); In re Wilson Industries, 886 F.2d 93, 96 (5th Cir 1989). The court in Buchner noted that there are only three situations under statute in which a federal trial court may remand a claim to state court. Buchner, 981 F.2d at 819. Those circumstances are: (1) a trial court has discretion to remand state law claims that were removed along with one or more federal question claims; (2) it must act on a timely motion to remand based on a defect in removal procedure; and (3) it must remand a case over which it has no subject matter jurisdiction. Id. A district court exceeds its authority when it remands a case on grounds not permitted by statute. Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 351, 96 S.Ct. 584, 593, 46 L.Ed.2d 542 (1976); Buchner, 981 F.2d at 820. There is a single exception to the Thermtron rule, and that exception is "a district court has discretion to remand to state court a removed case involving pendent claims upon a proper determination that retaining jurisdiction over the case would be inappropriate." Carnegie-Mellon University v. Cohill, 484 U.S. 343, 357, 108 S.Ct. 614, 623, 98 L.Ed.2d 720 (1988). In Carnegie-Mellon, the court determined that retaining jurisdiction was inappropriate where only pendent

state law claims remained to be decided after all federal claims had been dropped. Carnegie-Mellon, 484 U.S. at 354-56, 108 S.Ct. at 621-22.

The plaintiff has stated a state law claim for wrongful termination of his employment contract. As noted, this court does possess the discretionary authority to remand state law claims that were removed along with federal claims. Buchner, 981 F.2d at 819. The statutory source of this authority is 28 U.S.C. § 1441(c), which states:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title [federal question jurisdiction] is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all the issues therein, or, in its discretion, may remand all matters in which State law predominates.

28 U.S.C. § 1441(c). A claim or cause of action is not "separate and independent" from other claims or causes of action when they all arise from the same loss or actionable wrong. American Fire & Casualty Co. v. Finn, 341 U.S. 6, 14-16, 71 S.Ct. 534, 540-41, 95 L.Ed. 702 (1951); Dibble v. Grand Trunk Western R. Co., 699 F.Supp. 123, 125 (E.D. Mich. 1988); Crawford by Crawford v. Hospital of Albert Einstein College of Medicine, 647 F.Supp. 843, 847 (S.D.N.Y. 1986). If more than one wrong exists, "claims are not 'separate and independent' if the wrongs arise from an interlocked series of transactions, i.e., they substantially arise from the same facts." Finn, 341 U.S. at 14, 71 S.Ct. at 540. All

of the claims asserted by the plaintiff in this case either arise from a single claimed wrong - his termination from employment - or from wrongs which arise from the facts surrounding his termination. These claims are not "separate and independent" from one another. Because of this, § 1441(c) is inapplicable in this case, and does not provide this court with the authority to remand the state law claims.

The plaintiff has asserted no defects in the removal procedure that would justify remand, and therefore the only remaining statutory avenue for remand of these pendent state law claims is the third exception - want of jurisdiction. The case must be remanded if at any time prior to final judgment it appears that the court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c).

These state law claims by themselves provide no means of federal jurisdiction. However, by virtue of federal statute, this court has the ability to exercise jurisdiction over such claims:

[I]n any civil action of which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction over all other claims that are so closely related to claims in the other action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution . . .

28 U.S.C. § 1367(a).

Supplemental jurisdiction may be declined by the court in cases where (1) the claim raises a novel or complex issue of state law, (2) the claim substantially predominates over the claim or

claims over which the court has original jurisdiction, (3) the court has dismissed all claims over which it has original jurisdiction, or where (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c).

It is the court's opinion that these state law claims form part of the same case or controversy as the federal question claim now before this court. All of the Plaintiff's claims arise from incidents surrounding the termination of his employment. While the court in its discretion may decline to exercise jurisdiction in such a case, the court refuses to do so here. None of the provisions under § 1367(c) are sufficiently met to justify declining to exercise jurisdiction in this case. The court is not interested in piecemeal litigation, and it fails to see any benefit to fragmenting these claims which are properly contained in one action before this court. Keeping the constitutional claims in this court would create duplication, forcing the parties to litigate independent suits based on the same set of facts. Had these claims been brought as separate actions, joinder certainly would have been appropriate. As a final matter, the court notes that the Thermtron exception does not apply in this case since the federal claims are still viable. There remains no avenue which would permit the remand of any of the plaintiff's claims.

CONCLUSION

In that the court is exercising supplemental jurisdiction over the pendent state law claim in this matter, there exists no avenue through which this court would be permitted to remand any of the plaintiff's claims. The plaintiff's motion to remand shall be denied.

A separate order in accordance with this opinion shall issue this day.

THIS _____ day of March, 1995.

United States District Judge

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DEFENDANTS

ORDER DENYING PLAINTIFF'S
MOTION TO REMAND

Pursuant to a memorandum opinion issued this day, it is hereby
ORDERED THAT:

1) the plaintiff's motion to remand this cause to the
Circuit Court of Tishomingo County is DENIED.

All memoranda, depositions, affidavits and other matters
considered by the court in denying the plaintiff's motion for
remand are hereby incorporated and made a part of the record in
this cause.

SO ORDERED, this the _____ day of March, 1995.

United States District Judge